DOCUMENT RESUME

ED 197 633 HE 013 286

AUTHOR Smith, Eugene H.; Baron, Marvin
TITLE Faculty Member's Guide to U.S. Immigration Law.
INSTITUTION National Association for Foreign Student Affairs, Washington, D.C.
SPONS AGENCY International Communication Agency, Washington, D.C.
PUB DATE Sep 80
NOTE 24p.
AVAILABLE FROM National Association for Foreign Student Affairs, 1860 19th St., NW, Washington, DC 20009 (2-10 copies $2.50; 11-25, $3.50; 26-50, $5.00; 51-100, $10.00).

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS College Faculty; *College Students; Faculty Advisers; Federal Legislation; *Federal Regulation; *Foreign Nationals; *Foreign Students; Government Role; Guidelines; Higher Education; *Immigrants; Immigration Inspectors; *International Educational Exchange; Laws; Refugees; Researchers
IDENTIFIERS *Immigration Law

ABSTRACT

Immigration laws and regulations are briefly summarized to aid faculty members in understanding problems faced by foreign students and scholars. The objective is to enable faculty to properly advise foreign students regarding their academic programs and to recognize when a foreign student or scholar needs to be referred to the foreign student adviser for assistance. The following areas are covered: basic immigration documents and terminology, classifications of foreign students and scholars, and miscellaneous related matters. For purposes of immigration law, foreign students are classified as F-1 students, J-1 exchange visitor students, immigrants and refugees, nonimmigrants who are in the United States for some principal purpose other than study, and dependents of other aliens. Different regulations pertaining to the foreign student classifications are covered and include those regarding entering the United States, maintaining status, and employment. Foreign scholars are classified as follows: visitor for business, visitor for pleasure, practical trainee, postdoctoral student, exchange visitor, temporary worker of distinguished merit and ability, other temporary worker, other trainee, and immigrant or permanent resident. Steps to acquire immigrant status and the following miscellaneous matters are considered: institutional policy and staffing, immigration attorneys, support services, health insurance, federal and state income taxes, social security tax, federal financial aid, and expectation of scholars. (SW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

FACULTY MEMBER'S GUIDE TO U.S. IMMIGRATION LAW

by
Eugene H. Smith
Director, Foreign Student
and Scholar Programs
University of Colorado, Boulder

and

Marvin Baron
Adviser to Foreign Students and Scholars
University of California, Berkeley

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

NAFSA

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

HE013 284

National Association for Foreign Student Affairs
Copies of this publication can be obtained
free of charge except for a postage
and handling fee. Send orders to:
Publications Order Desk
National Association for Foreign Student Affairs
1860 19th St., N.W., Washington, D.C. 20009

CONTENTS

v **Foreword**

vi **Introduction**

1 **Basic Immigration Documents and Terminology**
- 1 Passport
- 1 Visa
- 1 Immigration Status or Classification
- 2 The Arrival/Departure Record or Form I-94
- 4 "Green" Card

5 **Foreign Students**
- 5 F-1 Students
  - 6 Obtaining an F-1 Visa
  - 7 Entering the U.S.
  - 7 Maintaining Status
  - 8 Employment
  - 9 Transferring to Another School
  - 10 Reporting to INS
  - 10 Disclosure of Information
  - 11 Dependents
- 11 J-1 Exchange Visitor Students
- 13 Immigrants and Refugees
- 15 Other Classes of Nonimmigrants
- 16 Change to Immigrant Status

18 **Foreign Scholars**
- 20 B-1 Visitor for Business
- 20 B-2 Visitor for Pleasure
- 21 F-1 Practical Trainee and F-1 Postdoctoral Student
- 21 J-1 Exchange Visitor
- 24 H-1 Temporary Worker of Distinguished Merit and Ability
- 25 H-2 Temporary Worker
- 26 H-3 Trainee
- 26 Immigrant or Permanent Resident
  - 28 Labor Certification
  - 29 Teaching Faculty Members
  - 29 Aliens of Exceptional Ability
  - 30 Other Employees
  - 31 Qualifying for Third or Sixth Preference

31 Obtaining an Immigrant Visa or Adjusting Status
32 Numerical Limitations
32 Time Required for Processing

34 **Miscellaneous Related Matters**
34 Institutional Policy and Staffing
34 Immigration Attorneys
35 Expectations of Scholars
35 Support Services
35 Health Insurance
36 Federal and State Income Taxes
36 Social Security Tax
36 Federal Financial Aids

FOREWORD

In 1979, the Task Force on Faculty Involvement of the National Association for Foreign Student Affairs (NAFSA) responded to a need expressed by several faculty groups and professional societies in the United States for a clear and concise publication that would help faculty in this country understand better the wide range of immigration laws and regulations that affect the foreign students and scholars with whom they work. The Task Force response was a recommendation to the NAFSA Field Service Program that such a publication be prepared and distributed. This booklet is the result. It has been produced with the financial support of the Associate Directorate of Educational and Cultural Affairs of the International Communication Agency and under the co-authorship of two foreign student advisers who have had extensive experience in international educational exchange programs at U.S. universities: Eugene H. Smith of the University of Colorado, Boulder, and Marvin Baron of the University of California, Berkeley. Both have served for a number of years on the NAFSA Government Regulations Advisory Committee.

September 1980

INTRODUCTION

Faculty members who work with foreign students and foreign scholars need to have a basic knowledge of the immigration laws and regulations which govern the stays of these students and scholars in the United States. The purpose of this booklet is to provide a brief summary of these laws and regulations. It is not intended as a comprehensive statement, but as an aid to faculty members in understanding the limitations placed by immigration laws on foreign academic visitors.

On almost every campus, the foreign student adviser, or someone with an equivalent title, is the person charged with the responsibility of knowing and interpreting immigration laws and regulations to the campus community. That person is also usually given exclusive authority to represent the institution to the Immigration and Naturalization Service (INS) by signing immigration documents. Questions and problems on immigration regulations should always be referred to the foreign student adviser.

Members of the campus community should not undertake to provide immigration advice or guidance to foreign students or scholars or to sign immigration documents for them on behalf of the institution. Such matters are highly technical and complex, and a minor error can compound into a major problem for the student, the scholar or the institution. The information in this booklet is provided as an aid to faculty members in understanding the problems faced by foreign students and scholars so that they can properly advise them regarding their academic programs and can recognize when a foreign student or scholar needs to be referred to the foreign student adviser for assistance. Readers are cautioned to use this booklet for that purpose only.

BASIC IMMIGRATION DOCUMENTS AND TERMINOLOGY

Some immigration terms are often used incorrectly, leading to basic failures of communication. It is necessary to start with accurate definitions of these terms and then to use them precisely at all times.

A *passport* is the document issued by the person's home country to identify the person as a citizen of that country, to permit him to travel abroad under the protection of the home country, and to permit his return to the home country. It is a requirement of U.S. immigration law that all nonimmigrants (aliens who are not permanent residents of the U.S.) except Canadians must have a valid passport to enter and remain in the U.S. Passports must be extended, renewed, or reissued by the alien's home government, usually through a consulate or embassy in the United States.

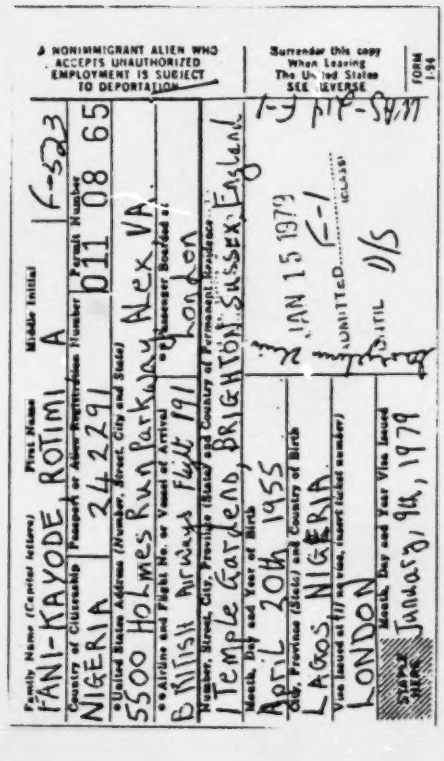
The United States *visa* is the stamp placed by a U.S. consular officer on a page of the passport. It indicates that the consular officer has determined the holder is qualified to apply for admission into the U.S. in a particular immigration classification. A valid visa does not insure an alien's entry into the United States; the decision on his actual admission is made at the port of entry by an immigration officer, and usually that officer will require certain other information and evidence as to the intentions and good faith of the applicant. The visa need be valid only at the time of entry into the U.S.; it need not remain valid while the alien remains here. Some visas are valid for several days, some for indefinite periods, but the expiration of the visa has no bearing on the length of time the alien may remain in the United States. That period is indicated on the Arrival/Departure Record, Form I-94 (see page 3). The term visa is frequently used incorrectly to mean legal status and permission to remain in the U.S. In fact, it has a more narrow and limited meaning.

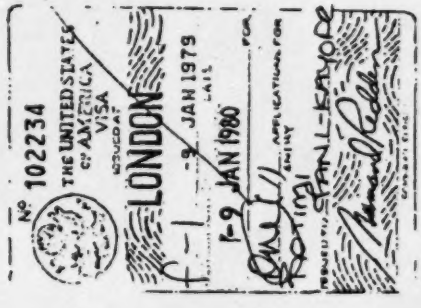
Immigration status or classification is what defines an alien's legal status in the U.S. and describes the alien's presumed principal pur-

pose of being in the U.S. Thus, we say that a foreign student holds F-1 student status, meaning that he is in the U.S. for the principal purpose of being a student and the sections of the law and regulations dealing with F-1 students define what he can and cannot do while in the U.S. This student probably entered the U.S. in possession of an F-1 student visa, but he might have entered using some other kind of visa, such as a B-2 tourist, and then changed his status in the U.S. from tourist to student. Therefore, it is inaccurate to describe an alien's *status* in terms of the type of *visa* he holds or held at the time of entry. Rather, an alien's legal status is described by the particular immigration classification he has been granted by INS. Throughout this booklet we will use the terms "status" and "classification" to describe accurately what is often inaccurately referred to as the alien's "visa."

The *Arrival/Departure Record or Form I-94* is a small 3x5" white slip which specifies the immigration status of nonimmigrants. The Form I-94 is completed partly by the alien and partly by the immigration inspector at the port of entry. When completed, and when the alien is properly admitted to the U.S. as a nonimmigrant, the Form I-94 will indicate the alien's name and certain other personal data, the date and place of his admission to the U.S., his immigration classification, and the date to which the alien is permitted to remain in the U.S. The Form I-94 must be kept valid at all times, and if the alien wishes to prolong his stay in the U.S. beyond the date indicated on the form, he must apply to the INS for extension of stay. That and any other actions taken by INS, such as change of classification, work permission, denial of applications, and required departure are all recorded on the Form I-94. The Form I-94 is the document which many persons erroneously refer to as the visa. Clearly, it is the more important document of the two, for it defines the current legal status of the nonimmigrant.

NOTE: In some cases, the date to which the alien is permitted to remain in the U.S. is indicated as "D/S." This means "duration of status," an indefinite period without a specific expiration date. In the case of an F-1 student, it





Visa

means the student is allowed to remain in the U.S. as long as he attends the school he is authorized by INS to attend and complies with all other requirements of maintenance of F-1 student status (see section on F-1 students).

"Green card" is the term commonly applied to the card more properly called the *Alien Registration Receipt Card, permanent resident card,* or *Form I-151* or *I-551.* It identifies the alien as a permanent resident of the U.S. or an immigrant. The "green card" was originally green in color, for several years was blue, and the current version is white and salmon in color. The term "green card" has stuck regardless of the actual color of the document. It is a laminated card 2-1/8 by 3-1/2" in size, and it carries a photograph of the alien, his date of admission to the United States as a permanent resident, and his alien registration number (an eight-digit number preceded by the letter A).

In order to know and understand the current legal status of any alien, one must see one or more of these documents. In the case of a nonimmigrant, the passport and the Form I-94 (Arrival/Departure Record) are the most important documents; in the case of the immigrant, the "green card" or Alien Registration Receipt Card is the vital one.

FOREIGN STUDENTS

There are several reasons why faculty members should have some understanding of the immigration regulations which govern foreign students. First, faculty members should understand the concern and even fear that many foreign students feel in the face of immigration laws that are often perceived as threatening their right to remain in this country. Second, faculty members need to know something about the limitations which the immigration regulations place on the flexibility of a foreign student's academic program, employment, non-academic training, and plans for the future. All of these matters will influence to some degree the manner in which a faculty member advises and guides a foreign student in his study program.

For purposes of immigration law, foreign students are divided according to their immigration classifications. F-1 students are the most common, and usually constitute the bulk of what we call foreign students. J-1 Exchange Visitor students are smaller in number but important, as they constitute the group of students who are sponsored by the U.S. government or other sponsoring agencies. A third category of foreign students is made up of immigrants and refugees, students who have the right and presumably have the intention to remain in the United States permanently. A fourth category is made up of various kinds of non-immigrants who are in the U.S. for some principal purpose other than study, dependents of other aliens, and perhaps those who are here illegally or without documentation. Each of these kinds of foreign students is governed by different regulations and each kind will be dealt with separately in the following paragraphs.

F-1 Students

An F-1 student is defined as a person who has a residence in a foreign country to which he plans to return, and who is coming to the United States temporarily and solely for the purpose of attending a school previously selected by him and approved by the Attorney

General. Note the important elements contained in this definition: intent to return home, temporary stay in the U.S., purpose exclusively to attend a school previously determined.

Obtaining an F-1 visa. In order to apply for admission to the U.S. as an F-1 student, an alien must first apply for and be granted admission to a school which has been previously approved by the INS (acting for the Attorney General) to accept foreign students. When the applicant is granted admission to the school, he is sent Form I-20, Certificate of Eligibility for F-1 Student Status. Before issuing Form I-20 to a prospective student, the school is required to determine that the student is qualified academically, linguistically, and financially to attend the school and to profit from the instruction available there. Failure by the school to make these determinations constitutes grounds for cancelling the INS approval of the school to accept nonimmigrant foreign students. That fact may help to explain to faculty members why admissions officers sometimes seem to be excessively cautious about the details of the prospective student's qualifications.

When the student receives Form I-20 from the institution, he takes it, his passport, and evidence of the source and amount of his financial support to the U.S. consulate which has jurisdiction over his place of residence (note that this can sometimes be a consulate attached to an embassy). The student must then demonstrate to the U.S. consular officer that he is a *bona fide* student, that he has sufficient funds to provide for all of his expenses in the United States, that he is qualified to attend the school to which he is admitted, that he actually intends to attend that school, and that he has a residence in his home country to which he is definitely committed to return. Several of these points are subject to wide latitude of interpretation by the consular officer, but none is more troublesome than the final one regarding the ultimate intention of the student. The consular officer is not only authorized, but is *required*, to determine the intent of the applicant, and the consular officer's determination and decision are not subject to appeal of any kind. Thus, we find frequently that students who appear to us to be *bona fide* students are not issued visas because the consular officer has determined that they do not intend to return home (perhaps on no firmer ground than the existence of a U.S. citizen brother), or do not meet some other qualification necessary to be a *bona fide* F-1 student under the law. Such determinations are final, and it is very rare that a consular officer can be convinced to change an initial determination of an applicant's intent.

Entering the U.S. If the consular officer finds the applicant to be qualified in all ways, he will stamp a visa on a page of the applicant's passport. The visa stamp gives the student permission to apply at a port of entry for admission to the U.S. At the port of entry, the student must again produce the Form I-20 issued by the school, show evidence of financial support, and convince the immigration inspector that he is qualified in all ways to be admitted to the U.S. as an F-1 student. If the immigration inspector's determination is positive, the student is considered to have been inspected and admitted to the U.S., and he will be issued Form I-94, Arrival/Departure Record (see above) indicating the date and place of his admission to the U.S., his immigration classification as an F-1 student, and the date to which he is permitted to remain in the U.S. If he wishes to stay in the U.S. beyond that time, he must apply to INS, with the endorsement of his school, for extension of stay. Failure to do so constitutes a violation of status.

Maintaining status. In order to maintain status as an F-1 student, the student must attend the school whose Form I-20 he used to gain admission to the U.S. He may not attend a different school unless he obtains INS permission. Except in special circumstances, INS will not grant that permission until the student has attended the authorized school for at least one academic term. He must be a full-time student during each of the regular semesters or terms from September through May; attendance at summer sessions is not required. The regulations prescribe that an undergraduate student must attend school at least twelve clock hours per week, usually interpreted to mean that he

carries a minimum of twelve credit hours each term. Any anticipated deviation from this norm should be discussed by the faculty adviser and the foreign student adviser. The regulations allow the individual school to determine what constitutes full-time attendance by graduate students, but they too must attend school in each regular term of the academic year. Further requirements of maintenance of status include keeping a valid passport at all times, not accepting unauthorized employment, and not transferring schools without the prior approval of INS. If a student fails to maintain status in any of these ways, that failure constitutes grounds for his required departure from the U.S.

Employment. An F-1 student is required to demonstrate full financial support in order to obtain an F-1 visa and be admitted to the U.S. as a student. Therefore, the assumption of the law is that the student will not be employed and thus take jobs away from U.S. workers or students. Exceptions to this policy are the following:

1. A student may be employed as a research assistant or teaching assistant or in connection with a fellowship without prior approval from anyone; such employment is considered a part of his educational program.

2. A student may be employed in other on-campus positions if such employment will not interfere with his ability to carry a full program of study and will not displace a U.S. worker. Although the regulations do not prescribe how these determinations are to be made, most campuses have established procedures to require clearance by the foreign student adviser before an F-1 student may be employed on campus.

3. A student may qualify for off-campus employment only if he can demonstrate that he has suffered an unforeseen change in financial circumstances which arose after his admission to the U.S. and which makes it necessary for him to work to help to support himself. Such a student must apply through the foreign student adviser to the INS, and he must convince both that he meets these requirements. If he is successful, INS will note on his Form I-94 his permission to work, and the student is authorized to accept off-campus employment *only* when he has that endorsed Form I-94 in his possession. He may work a maximum of twenty hours per week while school is in session and full time during vacation periods.

4. A student may be authorized employment for practical training for a maximum period of 12 months after graduation if he can demonstrate that the training is of a type that is not available in his home country and is directly related to his academic studies. Such a student must apply to INS with the endorsement of the foreign student adviser not more than sixty days before or thirty days after completing his program of study. He is authorized to be employed only when INS has endorsed his Form I-94 accordingly and has returned the form to the student.

Note that certain kinds of employment are *not* authorized by any of these exceptions to the no-work policy. Study-related off-campus work is not authorized unless the student qualifies for off-campus work on the basis of changed financial circumstances or for practical training. Alternate periods of work and study, such as are provided by many cooperative education programs, are not permitted unless the alternate work/study periods are *required* of all candidates for the particular degree for which the student is working. Internships and other paid positions made available for the experience and training of students are not available to foreign students unless the positions are considered on-campus employment or qualify as practical training after completion of the study program. Even jobs that do not pay a wage, such as free room and board for gardening or baby-sitting, *do* require off-campus work authorization. NAFSA and the international education community continually urge changes in these restrictive immigration policies, but such pleas have so far been unsuccessful because of the fear that aliens will take jobs which would otherwise be held by U.S. workers or students.

Transferring to another school. An F-1 student may not transfer to another school until he has permission from INS. Since applications for permission to transfer (and most other simple

immigration applications) often take from two to four months for approval, this restriction places the student in a Catch 22 situation: he cannot transfer until he gets approval, but he can't wait out of school to get that approval. Most students go ahead and make the transfer before receiving formal approval from INS, but that can be risky.

Reporting to INS. Upon the completion of a student's studies or upon his termination for any other reason, the school is required to report to INS that he has terminated. In addition, the school is required to report to INS if a student fails to register initially, fails to carry a full program of study, or fails to attend classes to the extent normally expected. These reporting requirements are specifically written into the regulations, and failure to make such reports constitutes grounds for revocation of authorization for the school to accept foreign students.

Disclosure of information. The matters regarding attendance listed above are the *only* reporting requirements specifically stated in the regulations. The institution is *not* required to report other violations of status, such as working without authorization. However, what is and what is not required of the institution is not always as clear as it should be, and sometimes disputes arise between the institution and the INS as to what information must be provided. Such disputes are made more complicated by the provisions of the Family Educational Rights and Privacy Act (FERPA), also known as the Buckley Amendment, by a supposed "release of information" statement which the student signs in an inconspicuous place on the back of his Form I-20, and by institutional policies (and advisers' proclivities) regarding the confidentiality of information about students. They are not easy to resolve, but most campuses follow a very conservative and protective policy regarding release of any information to INS other than that which is specifically spelled out in the regulations. Faculty members who are in doubt as to the kinds of information which can and cannot be released to anyone under the terms of the FERPA should consult their campus legal counsel or whatever campus official is responsible for carrying out the provisions of the FERPA.

Dependents. Dependents of F-1 students (spouse and unmarried minor children *only*) can be admitted to the United States in F-2 status. They are admitted for the purpose of accompanying the principal F-1 student to the U.S. F-2 dependents may not be authorized to accept employment under any circumstances. They may attend school, full or part time, while retaining their F-2 status.

J-1 Exchange Visitor Students

The Exchange Visitor classification is used for a variety of educational purposes. Under Exchange Visitor status, students, scholars, trainees, professors, researchers, and similar persons may come to the U.S. for temporary periods for the purpose of educational exchange under the sponsorship of an organization or institution which has previously been approved by the International Communication Agency (formerly by the Department of State) as an Exchange Visitor Program sponsor. Students may come to the U.S. in J-1 Exchange Visitor status if they are participants in a sponsored program (such as the Fulbright program) or under the sponsorship of their U.S. college or university, if it is designated as an approved Exchange Visitor program sponsor.

Students who are in J-1 status are subject to many of the same regulations, procedures and restrictions as are those in F-1 status, but there are some very important differences:

1. The J-1 student is considered a "sponsored" student and must have a sponsoring agency which may or may not provide financial support. His U.S. university may be that sponsoring agency for immigration purposes. If so, there exists a special relationship of sponsorship between the university and the student. Exactly what that means is a matter of interpretation for each institution, but it does imply a greater degree of responsibility on the part of the institution than does the F-1 classification.

2. Sponsoring agencies have considerable authority to impose additional requirements on

the student over and above those for F-1 students in matters such as the definition of a full program of study, whether the student can change fields of study, extend his stay, or transfer to another school or sponsorship.

3. The sponsoring agency has the authority to grant off-campus work permission to the J-1 student without referring the matter to INS if the sponsor determines that the employment is necessary because of an "urgent financial need which has arisen since acquiring Exchange Visitor status" and will not cause the student to fail to carry a full program of study.

4. J-1 students are eligible for up to eighteen months of practical training, as determined by the program sponsor, after completing their educational programs, compared to the maximum of twelve months which can be authorized for F-1 students.

5. The J-2 dependents of J-1 students can be authorized by INS to accept employment if they can demonstrate that the employment is necessary for the support of the dependents and will not be used for the financial support of the J-1 student.

6. A J-1 student is not allowed to change his educational objective in the U.S. He may change his field of study or degree objective (provided he has his sponsor's approval), but he may not switch from one category of Exchange Visitor to another, i.e., from student to researcher or from student to professor.

7. Certain J-1 Exchange Visitors are required to live in their home countries for a period of two years after completing their Exchange Visitor programs in the U.S. before they are eligible to apply for immigrant status or for nonimmigrant status as temporary workers, trainees, or intracompany transferees. The two-year home country residence requirement applies only to those Exchange Visitors who (1) are financially supported by the U.S. government or their home governments; or (2) have skills which are needed in their home countries, as specified on the Exchange Visitor Skills List; or (3) are medical doctors who have graduated from a foreign medical school and have come to the U.S. to study or work in the field of medicine. The purpose of the home country residence requirement is to enforce the return home of Exchange Visitors in order to carry out the educational exchange objectives of their program sponsors. Waivers of the residence requirement can be granted for specific reasons, but such waivers are extremely difficult to obtain.

8. Exchange Visitors are limited in their ability to change to another nonimmigrant classification. For example, a J-1 student is prohibited from changing to F-1 status unless he goes outside the U.S., applies for a new F-1 visa, and reenters the country in F-1 status.

In some ways the J-1 classification permits greater freedom and flexibility for students, and in other ways it imposes greater control. It allows greater flexibility in the matter of employment, in practical training and (perhaps most important to many students) in the fact that J-2 dependents may receive permission to be employed. It provides for greater control in the sense that a sponsoring agency can impose requirements in addition to those specified in the law and regulations, prohibits (with some exceptions) a change in classification to another nonimmigrant status, and in some cases imposes a home country residence requirement before the student can become a permanent resident, temporary worker, trainee, or intracompany transferee.

The basic document necessary for an alien to apply for a J-1 visa and J-1 status is the Form IAP-66 (formerly called Form DSP-66), Certificate of Eligibility for Exchange Visitor Status, issued by the sponsoring agency. The applicant follows procedures similar to those for F-1 status in applying for a visa, entering the U.S., and maintaining status; thus, consular officers and immigration inspectors, as well as program sponsors, exert a high degree of control over the lives of Exchange Visitor students.

Immigrants and Refugees

Immigrants or permanent residents are persons who are admitted to the United States for

the purpose of residing here permanently. They can be identified by their possession of a "green card," the Alien Registration Receipt Card, which is described in an earlier section of this booklet. Immigrants may apply for U.S. citizenship after a period of five years residence in the U.S. (three years if they are married to a U.S. citizen), but they are not required to do so, and they may remain in the U.S. indefinitely as long as they retain a residence here and are not convicted of certain kinds of crimes which would make them subject to deportation.

The Refugee Act of 1980 made substantial changes in the law governing refugees and asylum. It defines a refugee as a person who seeks admission to the U.S. because he is unable or unwilling to return to his home country because of "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." A person seeking asylum is one who applies for refugee status from within the U.S. or at a port of entry or land border. After admission to the U.S., refugees are considered to be in temporary status for a period of one year, at which time they are converted to permanent resident status retroactively to the date of their entry to the U.S. or attainment of refugee status. During their one-year waiting period, refugees can be identified by their possession of a Form I-94, Arrival/Departure Record, which specifies refugee status. After that time they are permanent residents and can be identified by their possession of a "green card" or Alien Registration Receipt Card.

For most college or university purposes, immigrants and refugees can be treated much like U.S. citizens. Of course, they cannot vote or hold political office, but unlike F-1 students and J-1 Exchange Visitors they are eligible for federal financial aids, may be employed without restrictions of the immigration laws, in most states can become residents for tuition purposes in public institutions, and generally have many of the same privileges and responsibilities as U.S. citizens. Their own intentions may or may not correspond to this generalization, as some of them obtain immigrant status as a matter of convenience or expediency, but under the law they are presumed to have the intention to reside permanently in the United States.

Practices differ from one campus to another as to whether immigrants and refugees are considered foreign students. In many cases they will not be considered foreign students and will not be included on the lists or files of the foreign student adviser. Because of different educational, linguistic, and cultural backgrounds, they need much of the same kinds of special services and programs as foreign students, and faculty members should be alert to those problems that might impede the academic efforts of their immigrant and refugee students.

Other Classes of Nonimmigrants

Other types of nonimmigrant students faculty members are likely to encounter include diplomats or government officials, international organization employees, temporary workers, and the dependents of these and other kinds of nonimmigrants. In most cases, such nonimmigrants are in the U.S. for some purpose other than to be students, and they are defined in the immigration law according to their primary purpose for being here. In some cases, it may be necessary for them to change their immigration classifications if they are to remain as students. Always refer any possible cases of this nature to the foreign student adviser for assistance.

Some potential students enter the U.S. as B-2 visitors and then gain admission to a school and apply for change to F-1 student status. If the student has informed the consular officer of his intentions and the consular officer agrees that the applicant is qualified to be a student, the consular officer will mark the visa "prospective student." In such cases, a change from visitor to student classification presents no particular problem. If this notation is not on the visa, INS may refuse to change the applicant to student status on the grounds that the alien should have applied for a student visa in the first place (or a B-2 prospective student visa), and that he fraudulently entered the United States claiming that his intent was to be a tourist whereas

his real intent was to be a student. Only in those cases where the applicant can demonstrate that his decision to study in the U.S. was made after entry into this country can he safely assume that his application for change to student status will be approved by INS.

For a chart listing the various classifications of nonimmigrants and the symbols applied to them, please refer to the chart at the back.

Change to Immigrant Status

Students in F-1, J-1 or other nonimmigrant classifications may approach faculty members for assistance or advice in changing their status to a permanent one. First of all, faculty members should heed the earlier advice to avoid giving information of a technical legal nature to such students, for they could be badly misled by an innocent and minor error. Such inquiries should usually be referred to the foreign student adviser. Second, in providing general assistance to such students, faculty members should consider the assumptions of the immigration law—namely, that students are here temporarily and solely for the purpose of attending school or for whatever other legitimate nonimmigrant purpose they have. The law assumes that they intend to return to their home countries and it is the exceptional case that can avoid that fate. Third, faculty members may want to consider the basic educational and international philosophies of their institutions regarding the acceptance and training of foreign students. Were these students admitted for the purpose of staying in the U.S. or so that they might return to their home countries and benefit their people? Such considerations are complex and defy simple conclusions, but they warrant examination by faculty members in determining whether or not to encourage a foreign student to attempt to remain in the U.S. permanently or for an extended period.

Regardless of any other considerations in this area, it is not easy for a foreign student to qualify for permanent residence in the U.S. In order to do so, he must either have a close family member who is a U.S. citizen or permanent resident of the U.S. (marriage to a U.S. citizen or resident can accomplish that purpose), or he must have occupational skills which are in great demand and which will enable him to obtain a labor certification. The labor certification is difficult to obtain and is a major obstacle to many foreign students who may wish to remain permanently in the U.S. Most are not able to remain here even though they may seriously want to do so.

FOREIGN SCHOLARS

A foreign scholar is normally considered to be any alien who holds a non-immigrant status and who is engaged in scholarly activity, such as teaching, conducting research, or gathering material for a book, at a university, college, research institute, or hospital, but who is not enrolled in any formal academic program. The line between some advanced graduate students and some young researchers is frequently not a sharp or easily defined one, but in discussing visas and related matters it is most useful to draw the line between aliens who are registered or enrolled at an institution and those who are not. The former are defined as *foreign students* while the latter are considered *foreign scholars* if they are engaged in a clearly academic pursuit. Aliens may work in various non-academic positions on U.S. campuses, but they do not fall into the category of foreign scholars, even though under certain conditions institutions may file visa petitions on their behalf.

As the flow of knowledge and the travel of scholars spilled over national borders so dramatically in the 1970's, the problems encountered in bringing foreign scholars into this country in the proper status increased. Many of the problems stem from conditions and restrictions written into federal law and regulations and from the slowness with which a number of immigration petitions are processed. A substantial number of difficulties are also generated by the lack of familiarity on the part of many U.S. faculty members with the basic conditions of the main immigration classifications as well as some degree of impatience they feel when they sense that "bureaucracy" is about to impede their effort to bring capable academicians from abroad to their laboratories or classrooms. The purpose of the following pages is to make more comprehensible to faculty members the major immigration classifications and the peculiarities of each so that they can avoid those problems that are avoidable and deal most effectively with those that are not.

The academic objectives of foreign scholars fall into a vast array of different categories, but when seen from the perspective of time and long-range plans, foreign scholars can be divided into four major types:

1. Scholars who are in the U.S. for a short visit of a few weeks or months and who have definite plans to leave the U.S. at the end of that time. Usually these scholars hold B-1 or B-2 status.

2. Scholars who are in the U.S. for a longer visit, i.e., more than a month or two but less than three years and who have definite plans to leave the U.S. at the end of their academic visits. Most scholars in this category hold J-1 status.

3. Scholars who are in the U.S. for a longer visit, as in (2), but who are considering the possibility of remaining in the U.S. for an indefinite period beyond their initial plans, either at the same institution or at another one. Scholars in this category might hold H-1 or J-1 status.

4. Scholars who are in the U.S. with a definite intent to seek permanent residence and who have found an institution which is interested in offering them long-term employment and in assisting them in obtaining permanent residence. Such scholars must apply for immigrant status.

According to the Immigration and Nationality Act, any alien who seeks to enter the U.S. is presumed to be an intending immigrant unless he can demonstrate that he fits into one of the nonimmigrant classifications defined in the law. In order to qualify for nonimmigrant status in the classifications which are of most interest to us, he must demonstrate that he has a residence in a foreign country to which he intends to return. This is significant because an alien who inquires at a U.S. embassy or consulate about obtaining immigrant status may be denied nonimmigrant status on the grounds that his inquiry revealed uncertainty about his intent to return to a residence abroad.

An alien who can demonstrate a clear intent to return to a residence abroad and who meets certain other conditions may qualify for a nonimmigrant visa. There are almost twenty types of nonimmigrant visas, but only a few of these are normally available to foreign

scholars. They are described in the following paragraphs.

B-1 Visitor for Business

The B-1 visitor for business classification can be used by scholars planning to pay short visits to one or several campuses. It is not intended for use by a scholar accepting any type of formal academic appointment for a term or longer. Reimbursement is possible from a U.S. source for travel expenses and subsistence (per diem) only; *no salary or honorarium is permitted.* Although INS does not police the latter prohibition and some U.S. institutions pay no heed to it, disregard of it can often create considerable hardship for the scholar and embarrassment to the institution, since it may be impossible to honor a promise made earlier to pay a scholar an honorarium. Unfortunately, not all individuals working in U.S. embassies and consulates are fully aware of this prohibition. If there is knowledge of the intent to make such a payment to a scholar before he enters the U.S., it is almost always possible for him to obtain a different visa and status which permits such payments. The only documents needed to obtain a B-1 visa are an invitation from a U.S. university and a showing of adequate financial support.

B-2 Visitor for Pleasure

The B-2 visitor for pleasure classification can be used by a scholar who is touring the U.S. but who also wishes to pay an academic visit to a U.S. campus during his stay in this country. If the alien indicates upon requesting a visa that he plans to combine an academic visit to the U.S. with sightseeing, he is likely to be given a "B-1/B-2" visa and be admitted to the U.S. in B-1/B-2 status, which does confer the right to be reimbursed for travel and subsistence. An alien solely in B-2 status is not permitted to be reimbursed in any way from a U.S. source. The same comments made above about honoraria (or other similar payments) to those in B-1 status apply fully to those in B-2 status, and institutions should encourage a scholar to avoid this status in spite of the great ease in acquiring it if there is any intent to reimburse him. The only document needed to obtain a B-2 visa is a showing of adequate financial support.

F-1 Practical Trainee and F-1 Postdoctoral Student

F-1 student classification is normally used by foreign students enrolled in formal academic programs, but there are two instances in which a foreign student may work in this country after completing his studies in F-1 status:

a. *Practical training.* A foreign student who has just completed a degree in the U.S. may engage in either academic or non-academic employment for up to twelve months if the work is directly related to his field of study and if such employment is considered to be unavailable in his country. (See section on F-1 students.)

b. *Postdoctoral status.* An alien who has completed a doctorate in the U.S. or abroad may continue in F-1 status or secure an F-1 visa to enter this country in order to engage in postdoctoral research or study. The position must be within the normal limits of postdoctoral research and thus could not be a regular staff position. Although there is no specified time limit for aliens in the F-1 postdoctoral category, it is assumed that no one in this status could get extensions for a total of more than two or three years, since it is rare that anyone is given a postdoctoral appointment for a longer span of time. Although it is not specifically prohibited by regulations, INS would normally not allow an F-1 student to have both a period of practical training and a period of postdoctoral student status. The documents needed to obtain a visa for postdoctoral studies are a Form I-20 noted "for postdoctoral research and study" and evidence of financial support. An alien already in the U.S. in F-1 status need only extend his stay as a continuing student, unless he accepts a postdoctoral position at a new institution, in which case he would need to apply for INS permission to transfer to the new school.

J-1 Exchange Visitor

J-1 Exchange Visitor is the classification most commonly used by foreign scholars in the

U.S. The designation "exchange" refers primarily tc the exchange of knowledge across national borders and only peripherally to reciprocal exchange programs between institutions or governments. Any alien who has sufficient academic training to benefit from an academic or professional program at a U.S. college, university, laboratory, hospital or business may be eligible for this status if the host institution or facility has an Exchange Visitor Program authorized by the International Communication Agency. To receive such authorization an institution must delineate the kinds of academic objectives it would help aliens to achieve and demonstrate its capacity to meet certain professional standards in carrying out the requirements set by the ICA.

Students may be eligible for this status (see the section on J-1 students), but most aliens using it are in one of the other categories, i.e., trainee, teacher, professor, research scholar or specialist, international visitor, or professional trainee (medical). It is important to note that a J-1 Exchange Visitor may not change his academic objective while in the U.S.; thus, if it is known that he is coming in some dual capacity, that fact should be noted on the Form IAP-66, Certificate of Eligibility for Exchange Visitor status, that is issued to him. Transfer from one institution to another is usually permitted if the academic objective remains essentially unchanged, provided that the alien is still within the overall time limit for his category. Foreign faculty and researchers are subject to a three-year limit to their stays, and getting any substantial extension beyond three years is difficult.

An alien coming to the U.S. in J status will be subject to a two-year home country residence requirement if his financial support comes from the U.S. government, his government, or an international organization; if his country and field of specialization are listed on the Exchange Visitor Skills List, which indicates the manpower needs of most developing countries in the world; or if he is a foreign medical graduate. The Exchange Visitor who is subject to this requirement may not become an immigrant, a temporary worker, or an intracompany transferee until he has spent two years in his home country following completion of his stay in Exchange Visitor status. If the Exchange Visitor is not subject to the foreign (home country) residence requirement, there is no specified minimum time he must spend outside the U.S. before returning either in Exchange Visitor or some other status.

It is possible to have the two-year foreign residence requirement waived, but such waivers are difficult to obtain. Thus, an institution should make certain that a scholar about to come to the U.S. in J status is fully aware of the possibility of his being subject to this requirement and the consequence of it. Any scholar who is considering the possibility of staying in the U.S. on a permanent or long-term basis who might be subject to the foreign residence requirement should avoid J status. (Note: Research scholars who receive funding from a U.S. government research grant awarded to an institution for a specific research objective are *not* considered to be subject to the foreign residence requirement because of such funding; only if the funding were awarded for an international exchange objective, e.g., the improvement of the teaching of law in Indonesia, would the recipient be subject.)

The only document needed to obtain the J-1 visa and enter the U.S. in J-1 status is Form IAP-66 issued by the Exchange Visitor Program Sponsor. The Form IAP-66 indicates in some detail the academic objective to be pursued and the source and amount of funding.

There are two major types of sponsors entitled to have their own Exchange Visitor Programs: organizations, both private (e.g., the African-American Institute) and U.S. governmental (e.g., A.I.D.), and U.S. academic institutions. Either type of sponsor has the power to refuse to release the alien to another sponsorship if it feels that such action would be contrary to the purpose for which that individual was originally brought to this country. Such powers are more frequently invoked by organizational sponsors than by academic institutions.

H-1 Temporary Worker of Distinguished Merit and Ability

H-1 status is often requested by scholars who note the title and conclude that it somehow confers greater prestige and benefits than any other nonimmigrant status. There is little basis for such a belief. In view of the considerable documentation that is required and the likelihood of a delay of several months before the alien may enter the U.S., this classification is usually used only if the waiting time is of no importance and if there is some specific reason why Exchange Visitor status can not or should not be used. It is true that no foreign residence requirement attaches to this status; thus, change to another classification would not be prohibited by that obstacle. Neither is there a specific limit on the length of stay in the U.S., as there is in the case of J-1 Exchange Visitors. A further important distinction between J-1 and H-1 status is that with the former, financial support can come from any source; with the latter, the expectation is that the alien is being employed and paid by the institution, hospital or business that filed the H-1 petition.

The H-1 alien must be pursuing a scholarly or professional objective that is of a temporary nature, i.e., he cannot hold a permanent faculty or staff position (but he may take the place of, for one or several years, an American holding a permanent faculty or staff position). Extensions of stay are usually available to an H-1 alien for up to three or four years. Requests for extensions beyond that period would bring into serious question the "temporary" aspect of his activities in this country.

To qualify for H-1 status, the alien must have clearly demonstrated ability and accomplishment in his field of specialization. In the past, this was interpreted by INS to mean that the alien had, at a minimum, an advanced degree, preferably a doctorate. In the last few years, however, rulings by the Board of Immigration Appeals have made it possible for an alien with only a B.A. or B.S. degree to qualify for H-1 status if it can be shown that he is being employed as a member of the professions on the basis of special abilities he has demonstrated.

The documents needed for obtaining H-1 status usually include several letters from knowledgeable individuals in the field attesting to the "distinguished merit and ability" of the alien; a curriculum vitae, including, when applicable, a bibliography of articles and books the alien has written; a copy of the highest academic degree awarded to the alien; and the H-1 visa petition, Form I-129B, which can be filed by any organization offering empioyment to the alien (unlike the J-1 which can be secured only by organizations that have been granted an Exchange Visitor Program). An H-1 petition is filed by the employer with the INS office having jurisdiction over the place of employment. After a processing time that is normally two to three months, INS will send notification of approval directly to the U.S. embassy or consulate at which the alien will apply for a visa, or to another INS office in the U.S. if the alien is already in the country and seeking to change his status. The alien must then apply for change of status if he is in the U.S. or for an H-1 visa if he is outside the U.S. If the alien is in the U.S. in H-1 status secured by another employer, the new employer must file a new Form I-129B, although the amount of documentation needed may be less if ample documentation for the same kind of work was provided for the first petition. Obtaining an H-1 visa or H-1 status usually requires a minimum of three months, and longer periods are not uncommon.

H-2 Temporary Worker

There is no minimum educational or professional accomplishment required for H-2 temporary worker classification; an alien who had never attended college could be eligible. By means of a labor certification request, the employer must show clearly that he has been unsuccessful in genuine attempts to find U.S. workers with the necessary skills to perform the temporary job in question. Not only does the labor certification require a great deal of effort and documentation, but there is likelihood of its denial unless there is a clear shortage of workers with similar skills in the U.S. There are instances, however, in which a university might consider this status for aliens who do not

have a college degree (or otherwise do not qualify for H-1 status) or who may be engaged in work that is only quasi-academic, e.g., an alien who is skilled at cataloging certain library materials from his country.

Documents needed for the H-2 visa include the H-2 visa petition, Form I-129B, and a labor certification request on Forms MA7-50A and MA7-50B. Approval notices are transmitted in the same way as for H-1 status (see above).

H-3 Trainee

While H-3 trainee classification often seems tempting, it is used infrequently, primarily because an employer will succeed with a petition for this status only if he can demonstrate that a special *training* program will be made available to the alien. If the alien will be working on a research project, for example, it cannot be argued in most instances that he is receiving special training in the narrow sense that is applied by INS. An alien who would be trained in the use of the electron microscope might qualify, but if he already has mastery of this skill and is to use it for a research purpose, that is not construed to be training. Documents needed for this visa include the H-3 visa petition, Form I-129B, and a detailed explanation of the training program to be offered. No labor certification is required. Neither is there need for documentation of academic accomplishment, but the alien's academic background should be given so that INS can understand how it is related to the proposed training and why the employer is interested in offering such training.

Immigrant or Permanent Resident

An immigrant or permanent resident is a person who has been admitted to the U.S. for the purpose of remaining here indefinitely. An immigrant can be identified by his possession of a "green card," or Alien Registration Receipt Card, Form I-151 or I-551, which is described in an earlier section of this booklet. An immigrant is eligible to apply for U.S. citizenship after residing here for five years (three years if he is married to a U.S. citizen), but is not required to do so. An immigrant may engage in employment without special permission from INS, and in many respects is treated like a U.S. citizen. However, there are distinctions between citizens and immigrants which go beyond the right to vote and hold office. For example, an immigrant who is convicted of possession of narcotics can be deported, and an immigrant is not eligible to hold employment in a federal civil service position.

A scholar who is coming to the U.S. to take a permanent faculty position, or who has the intention to remain permanently in the U.S., should apply for an immigrant visa. However, those eligible for immigrant visas or for adjustment of status in the U.S. to permanent resident status are limited to the following three types of persons:

1. Aliens who have family members who are U.S. citizens or permanent residents, i.e., the spouse or child of a U.S. citizen; the brother, sister, or parent of a U.S. citizen who is 21 years old; or the spouse or dependent child of a U.S. permanent resident. These family members can be classified under the immigration law as immediate relatives or first, second, fourth, or fifth preference immigrants by filing with a U.S. consular officer (or with INS if already in the U.S.) documents proving that family relationship.

2. Refugees and applicants for asylum, persons who have fled from their countries because of "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

3. Aliens who qualify because of their occupational skills, specifically those who are "members of the professions" or who possess "exceptional ability in the sciences or the arts" (third preference) or persons who are "capable of performing specified skilled or unskilled labor, not of a temporary or seasonal nature, for which a shortage of employable and willing persons exists in the United States" (sixth preference). Foreign scholars who are offered permanent or long-term positions in academic institutions might qualify under this category as either third preference or sixth preference immigrants.

Foreign scholars wishing to immigrate to the U.S. who can qualify under the first category of family members of U.S. citizens or permanent residents usually can do so through their own initiative without assistance from a prospective employer. The same is true of refugees and asylum applicants. However, the efforts of a prospective employer are necessary for an alien to qualify as a third or sixth preference immigrant, and it is in this area that academic institutions become involved in applying for immigrant status for prospective faculty or staff members. Such applications tend to become complicated and time-consuming. Faculty members are urged to consult the foreign student adviser or equivalent campus official whenever the possibility arises of hiring an alien for a faculty position. A brief summary of the requirements follows in order to alert faculty members to some of the delays and problems they may encounter.

Labor certification. The first and most difficult requirement for an alien to qualify for third or sixth preference classification is that of a labor certification. A labor certification is a determination and statement by the U.S. Department of Labor (DOL) that there are no qualified U.S. workers (or *equally* qualified workers in the case of teaching faculty members) available for the employment and that the employment of an alien in a particular position will not adversely affect the wages and working conditions of other U.S. workers in the field. That is, the alien applicant and the employer must demonstrate to the satisfaction of the DOL (1) that the wages and working conditions of the alien will not depress the labor market and that the employer is not hiring "cheap foreign labor"; and (2) that the alien selected for the position of teaching faculty member is *better* qualified for the position than are any of the U.S. applicants who may be available for the position, or that the alien selected for any position other than that of a teaching faculty member is the *only* qualified person who is available for the position. The DOL requires elaborate procedures and documentation for labor certification applications. Applications by academic institutions will usually fall into one of the categories of (1) teaching faculty members, (2) aliens of exceptional ability, or (3) others.

Teaching faculty members. In order to obtain a labor certification for a prospective teaching faculty member, the institution must demonstrate that the alien was selected as the result of a competitive recruitment and selection process and that the alien was found to be better qualified than any U.S. applicant for the position. The institution is required to document the search process, demonstrate that a thorough recruiting campaign was carried out, show how the position was advertised and candidates were recruited, and satisfy the DOL that the institution made a good faith effort to recruit the best qualified person for the position, regardless of U.S. citizen or alien status. The detailed requirements for documenting the recruitment and selection process need to be kept in mind from the beginning, so that if an alien is selected for a position, the institution is able to document adequately the procedures which were followed.

Aliens of exceptional ability. The DOL has determined that there is a shortage of qualified persons available in certain occupations. These occupations are listed on "Schedule A," and aliens who are qualified in Schedule A occupations can be granted pre-certification or blanket certification (precluding the need for the more painstaking certification procedure described above) by virtue of their qualifications only and without reference to any specific job opportunity. Schedule A at one time included virtually anyone who could be considered a member of the professions. Since 1972, Schedule A has been reduced dramatically, and it now includes a much more limited range of occupations. The most relevant "occupation" for academic institutions is that of "aliens of exceptional ability in the sciences or arts including college and university teachers of exceptional ability."

In order to qualify for labor certification as an alien of exceptional ability under what is known as Schedule A, Group II, an alien must demonstrate that he is accorded "widespread acclaim and international recognition." An ap-

plication for labor certification under Schedule A is made by the alien to a U.S. consular officer if the alien is outside the U.S. If the alien is in the U.S., the application is made to an INS officer. Standards for judging whether an alien has "exceptional ability" have never been adequately developed, and consular officers and INS officers vary widely in making decisions on such applications. The DOL at one point cited as examples of persons who would qualify for Schedule A, Group II, Albert Einstein, Enrico Fermi, and Werner von Braun. Although some consular officers and INS officers took these examples literally, a broader interpretation of this new category seems to be taking hold and it would be wise to explore the standards currently being used by local INS offices.

Other employees. If an academic institution wishes to apply for a labor certification for a prospective employee other than a teaching faculty member or a person who will qualify as being of exceptional ability, the institution must demonstrate that the alien is being offered wages and working conditions which are normal for the occupation and that there are no U.S. workers available who are even minimally qualified for the position. That is, the institution is not allowed to select the *best* qualified person for a position if a labor certification will be necessary; it can obtain a labor certification only if the alien is the *only* qualified person available for the position. The DOL requires that the employer conduct a good faith search for qualified applicants; advertise in professional journals and in newspapers of general circulation; recruit through its usual methods and also through the state employment service and sometimes other sources which do not appear appropriate for academic positions; post the job internally within the organization; and generally comply with very detailed advertising, recruiting, and selection procedures. The labor certification will be granted only if the DOL is satisfied that the employer has complied with all of its recruiting requirements and is unable to find a minimally qualified U.S. worker who is available for the position.

Qualifying for third or sixth preference. If the employer and the alien are successful in obtaining a labor certification, the next step is to apply to INS for classification as a third preference or sixth preference immigrant. Foreign scholars would normally qualify for either classification, but since sixth preference is currently "oversubscribed" (see later section on numerical limitations), third preference is the alternative usually selected. An alien himself or an agent acting in the alien's behalf (including the employer) can apply for third preference classification; an employer must apply for sixth preference classification in behalf of an alien. Once the labor certification is obtained, there is usually little difficulty in obtaining third or sixth preference classification for an alien, although it is one more step which often delays the alien's ultimate arrival in the U.S. or adjustment to immigrant status.

Obtaining an immigrant visa or adjusting status. The third and final step in acquiring immigrant status is obtaining an immigrant visa and entering the U.S. as a permanent resident, or, if the alien is already in the U.S., applying for adjustment of status to that of a permanent resident. Once labor certification is obtained and a third or sixth preference classification is approved, the alien who is outside the U.S. can apply to a U.S. consular officer for an immigrant visa. His immediate family — that is, his spouse and unmarried minor children only — can apply for immigrant visas in the same classification as the principal alien. If the alien is found to be eligible for an immigrant visa in all other respects, he and his family can be granted immigrant visas and proceed to the U.S. as immigrants.

If the alien is already in the U.S., he and his immediate family can apply to the INS for adjustment of status to that of permanent residents. That adjustment of status will be granted by INS if the alien is found to be eligible in all other respects. An alien is not eligible for adjustment of status if he has worked in the U.S. without authorization any time after January 1, 1977, unless the alien is an immediate relative of a U.S. citizen.

Numerical limitations. The immigration law provides for a maximum of 270,000 immigrants per year (exclusive of immediate relatives, refugees, and certain special immigrants). The 270,000 annual limitation is shared by the six preference classifications, each of which is assigned a certain percentage of the total. In addition, any one country can be allocated a maximum of 20,000 immigrant visas per year, and any one colony or dependency a maximum of 600 visas per year. Because of these limitations by preference and by country, not all persons who qualify for one of the preferences will be immediately eligible for an immigrant visa. In such a case, the preference category and/or the country maximum are said to be over-subscribed.

Generally speaking, third preference immigrant visas have been and probably will continue to be immediately or quickly available to natives of all countries except China, India, Korea, Mexico, the Philippines, and most colonies, such as Hong Kong. Sixth preference immigrant visas are not immediately available to natives of any country; a waiting period of ten months or more is necessary in all cases, and sixth preference visas are simply unavailable to natives of some countries because the 20,000 (or 600 in the case of colonies) maximum allocation is used by the higher preferences. The availability of immigrant visas in each preference classification and for each country varies greatly from time to time. Faculty members should consult the foreign student adviser for detailed information.

Time required for processing. One of the most serious problems involved in the planning for hiring aliens for permanent or long-term positions is the amount of time necessary to process all of the applications and achieve the proper immigrant status for the alien. These times vary greatly, and faculty members should consult the foreign student adviser for more detailed and accurate information.

The combination of the three steps of (1) labor certification, (2) preference classification, and (3) immigrant visa or adjustment of status will require varying lengths of time, especially since in some cases certain applications can be made and processed simultaneously. It is likely that the entire process will require a minimum of six months and could well take a year. Faculty members and their academic departments need to bear in mind these time-consuming procedures whenever consideration is given to hiring an alien for a specific position.

MISCELLANEOUS RELATED MATTERS

Institutional Policy and Staffing

Although the decisions as to which students to admit and which scholars to invite and for what purposes are usually the responsibility of the academic departments or other academic units, there are good reasons for the existence of certain institution-wide policies. If an institution is to accept foreign students and invite foreign scholars, it is essential that the institution employ staff who have developed a high degree of knowledge and expertise on immigration matters and that sufficient time and resources be made available to that staff to serve all of the immigration needs of students and scholars. Immigration work is technical, complex, and time-consuming, and it must be done thoroughly and precisely.

Immigration Attorneys

One measure of the kind of effort and enterprise which is necessary to perform immigration tasks well is the fact that a skilled immigration attorney charges a fee of from $1,500 to $2,000 to file an application for labor certification and immigrant status and to see it through to its end. Unless there are very special complexities, there is usually no special reason for incurring the extra expense of hiring an immigration attorney for visa petitions, as most of the information needed is already available in departmental files and a skilled foreign student adviser is capable of putting this information together in a manner which will satisfy the requirements of the law. The foreign student adviser has access to written information and knowledgeable persons, and the frequency with which he deals with immigration matters makes it possible for him to be fully familiar with most essential procedures. Nevertheless, it is wise to have knowledge of dependable immigration attorneys to whom students and scholars with special problems can be referred with confidence.

Expectations of Scholars

U.S. faculty members who agree to host a foreign scholar should take pains to insure that they have a full understanding of what the scholar expects in the way of facilities, collaboration, time of departmental colleagues, and similar matters, so that a serious disappointment does not result. With non-salaried scholars, for example, there may be a tendency to feel that simply extending the invitation is enough and that once the scholar is here he will take care of his own needs and interests. For some scholars this may be true, but clarifying this point in advance is usually wise.

Support Services

In addition to having staff who can properly handle complex immigration matters, it is essential that a school also have staff who provide important non-academic information and supporting services concerning, for example, housing, orientation to the community and its schools, English language programs for spouses (and occasionally for the scholars themselves), cultural and recreational programs, and similar matters. Usually it is the foreign student adviser who is responsible for insuring that such services are provided to foreign students, but it is equally important that similar services be provided to foreign scholars.

Health Insurance

The institution should take steps to be certain that all foreign students and scholars have the opportunity to enroll in a suitable health insurance program. Again, the foreign student adviser usually provides this information to students, but sometimes neglects foreign scholars, who are equally in need of health insurance. Most foreign students and scholars come from countries where there is some kind of national medical plan or health care service, and it is very difficult for them to understand that a week in a U.S. hospital can cost as much as $2,000 to $3,000. The institution should take steps to be certain that all foreign students and scholars receive full information about adequate health insurance promptly so that they

can take immediate steps to enroll in a suitable health plan.

Federal and State Income Taxes

In most cases, foreign students and scholars do pay federal and state income taxes if they are employed. In certain cases they can be exempted from those taxes if there is an income tax treaty between the U.S. and their country of residence, or if their employment can be considered to be in the nature of a fellowship. Depending upon their length of stay in the U.S. and other factors, foreign students and scholars may pay income taxes at the rate for residents or for non-residents. Tax matters are complicated, and the important point for faculty members to know is that foreign students and scholars usually do pay income taxes and that such taxes should normally be withheld from their salaries as is the case for citizens and residents.

Social Security Tax

Foreign students and scholars who hold F-1 student or J-1 Exchange Visitor status do not pay Social Security tax if they are authorized to be employed. All other aliens do pay Social Security tax if their employment comes under the Social Security system. Any alien may obtain a Social Security number to be used for bank identification and similar purposes by applying in person to the local Social Security office with a passport and valid Form I-94 in hand. It should be noted and understood that possession of a Social Security card and number does not in itself constitute authorization to be employed.

Federal Financial Aids

Foreign students in F-1 or J-1 status, and those in most other nonimmigrant classifications, are not eligible to receive federal financial aids in the form of Basic Educational Opportunity Grants, federal work/study programs, guaranteed loans, and similar programs, as these programs are designed to serve citizens and residents of the U.S. Students who are immigrants or refugees usually *are* eligible for such aids. The distinctions are complicated, and faculty members are urged to contact the foreign student adviser and/or the financial aids office for more precise information about financial aids which may or may not be available to any particular student.

We hope that the information presented in this booklet will be helpful to U.S. faculty members and other campus constituencies in understanding some of the ways in which U.S. immigration laws and regulations affect the educational programs and future plans of foreign students and scholars. Faculty members are urged to maintain close liaison with the foreign student adviser and any other campus officials who are responsible for representing the institution in dealing with foreign students and scholars. These persons, usually members of NAFSA, have available to them written materials, knowledgeable colleagues, and other resources through NAFSA and related professional organizations and through their frequent contact with government officials who administer the immigration regulations. They are prepared, willing, and eager to be of assistance to faculty members and others in carying out the international educational objectives of the institution.

BEST COPY AVAILABLE

Major Types of Visas

TYPE OF VISA	TIME NEEDED*	POSSIBLE INCOME FROM U.S. SOURCE(S)	ELIGIBILITY CRITERIA	MAXIMUM LENGTH OF STAY IN U.S.	ADVANTAGES	DISADVANTAGES	SUPPORTING DOCUMENTATION NEEDED	GOV'T FORM REQUIRED
B-1 VISITOR FOR BUSINESS	1-3 weeks	Reimbursement for travel & subsistence (per diem) only; no honoraria or salary	Proof of academic or business purpose of U.S. visit	6-12 months (stay renewable every 6 months)	Quick & relatively easy visa to obtain; no gov't petition/ form necessary	No honorarium/payment for lecture, consultation from any U.S. source	Letter of invitation indicating nature of academic enterprise	NONE
B-2 VISITOR FOR PLEASURE	1-3 weeks	NONE	Evidence of financial support and of legitimate tourist purpose for U.S. visit	6 months (renewable)		Limited stay in U.S., no U.S. income permitted	Proof of adequate finances for U.S. visit	
F-1 STUDENT (including post-doctoral students)	2-5 weeks	Academic employment on campus OK; other work allowed only in case of unexpected financial need	Admission to academic course of study or offer of postdoctoral research position	As long as academic progress continues (2-3 years for postdoctoral students)	Easy to transfer to other status when applicable; not subject to 2 yr. home country residence requirement	Off-campus work severely limited except for post-degree practical training (up to 12 months); spouse (F-2) cannot work	Proof of academic admission/ invitation for post-doctoral position shown on Form I-20; evidence of financial support for entire program	I-20
H-1 TEMPORARY WORKER OF DISTINGUISHED MERIT AND ABILITY	2-3 months	Unlimited income from petitioning university or other organization; no other substantial income permitted without new petition from new employer	Distinction in field; usually doctorate; publications desirable	3-4 years (stay renewable annually)	Not subject to home country residence requirement 2 yrs. before possible application for immigrant status	Can require long time to obtain; considerable supporting documentation needed	Biodata sheet; bibliography; photocopy of highest degree; at least 2 letters attesting to merit of scholar & other evidence of merit	I-129B
H-3 TRAINEE			Invitation to specific training program in which s professional field				Biodata sheet; explicit explanation of proposed training program	
J-1 EXCHANGE VISITOR (students, researchers, professors)	2-6 weeks	Unlimited income for academic work on campus; off-campus work sometimes possible	Admission to academic program with sponsorship or invitation to teach, research or lecture	Students: as long as academic progress continues; Scholars: 3 years (stay renewable annually)	Relatively quick & easy to obtain; spouse can work if financial need exists; easier to get work permit than when on F-1 visa	Subject to 2 yr. home country residence requirement if funded by U.S. gov't or their gov't or home country needs manpower skills or if foreign medical graduate	IAP-66 from program sponsor with details of financial support	IAP-66
IMMIGRANT: PERMANENT RESIDENT	6-12 months (longer in some cases)	No restrictions	Professional skills for particular positions not available among Americans, or spouse or child of American citizen	Indefinite (naturalization optional after 5 years)	No need for work permits, extensions of stay	Extensive time, effort, documentation needed	Labor certification (based on professional skills & non-availability of Americans); much specific information necessary	MA7-50A MA7-50B I-140 I-485

*From date of request to arrive in U.S.